

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

In re
MILA, INC.,
dba Mortgage Investment Lending Associates,
Debtor.
TIN: 91-1471279

Case No. 07-13059-SJS

GEOFFREY GROSHONG, chapter 11
trustee for MILA, Inc.,
Plaintiff,
v.
LAYNE E. SAPP and the marital community
composed of Layne E. Sapp and Cari Sapp;
NEXT ONLINE MORTGAGE
TECHNOLOGIES, INC., a Washington
corporation; LIMA SIERRA LLC, a
Washington limited liability company;
DESTINY LEASING LLC, a Washington
limited liability company; CRS
FINANCIAL, LLC, a Washington limited
liability company; CRS FINANCIAL II,
LLC, a Washington limited liability
company, and CRS FINANCIAL III, LLC, a
Washington limited liability company;
Defendants.

Adversary Proceeding No. 08-01211-SJS
[PROPOSED] PRETRIAL ORDER

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PRELIMINARY STATEMENT

9 This pretrial order is lodged as required by the Court's "Order Directing Lodging
10 of Pretrial Order" [Docket No. 134] entered February 1, 2010. Although the parties have
11 exchanged documents and subpoenaed some records from third parties, discovery is not yet
12 complete. The parties submit this proposed pretrial order while agreeing that no party will object
13 to any party seeking amendments of it before the December 17, 2010 deadline for the pretrial
14 order lodging in the "Order Re: Discovery and Pretrial Schedule" [Docket No. 115].

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JURISDICTION

23 The court has jurisdiction pursuant to 28 U.S.C. §§ 157, 1334, 1367, 2201, and
24 2202.

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CLAIMS AND DEFENSES

27 Plaintiff (sometimes referred to herein as "the Trustee") will pursue the following
28 claims at trial:

29 (1) Violation of RCW 23B.06.400 and RCW 23B.08.310 in payment of
30 dividends to all shareholders of MILA;

31 (2) Breach of fiduciary duties by Mr. Sapp;

32 (3) Theft of corporate opportunities by Mr. Sapp;

33 (4) Fraudulent transfer under 11 U.S.C. § 548 against each defendant;

34 (5) Fraudulent transfer under RCW Ch. 19.40 and 11 U.S.C. §544(b)
35 against each defendant;

36 (6) Breach of a certain Consultant Intellectual Property Agreement
37 ("Consultant Agreement") by Mr. Sapp;

38 (7) Breach of trust under Consultant Agreement by Mr. Sapp;

39 (8) Declaratory judgment against Next Online Mortgage Technologies,
40 Inc. ("Next Online") regarding rights to certain software;

41 (9) Breach of contract against Next Online;

1 (10) Preference claims under 11 USC § 547) against Mr. Sapp, Next
2 Online, CRS II and Lima Sierra; and

3 (11) Disallowance of claims under 11 U.S.C. § 502(d)) against Mr. Sapp,
4 Next Online and CRS and to set aside unauthorized post-petition transfers under
5 11 U.S.C. § 549 against Mr. Sapp and Next Online.

6 The Trustee also seeks to offset the amount to be distributed on account of the
7 allowed claims, if any, of defendants Sapp, Next Online, and CRS Financial, LLC in this
8 bankruptcy case against the amount of the Trustee's judgment against them in this action.

9 **DEFENDANTS' AFFIRMATIVE DEFENSES**

10 Defendants will pursue the following affirmative defenses and claims:

11 1. Plaintiff lacks standing to assert some or all of his claims, including,
12 without limitation, any and all claims asserted on behalf of shareholders or creditors of MILA.

13 2. Some or all of Plaintiff's claims, including, without limitation, the first,
14 third, fifth, and sixth claims for relief, are time-barred in whole or in part by the applicable
15 statutes of limitations, statutes of repose, and other applicable law.

16 3. Some or all of Plaintiff's claims, including, without limitation, the first,
17 second, third, eighth, and fourteenth claims for relief, were fully disclosed to MILA's
18 shareholders and creditors, who expressly or by implication consented to the transactions.

19 4. Some or all of Plaintiff's claims are barred by the doctrines of waiver,
20 estoppel, and laches.

21 5. The transferee of each transfer or obligation alleged to form the basis for
22 liability under the fifth claim for relief took for value and in good faith and so has a lien on or
23 may retain any interest transferred pursuant to sections 548(b) and (c) of the Bankruptcy Code.

24 6. Each transfer alleged to be fraudulent is not avoidable under state law or
25 federal law because each transfer was accepted in good faith and for reasonably equivalent value.
26 The Defendants are entitled to a lien on or a right to retain any interest in the asset transferred,

1 enforcement of an obligation incurred, or a reduction in liability, as applicable, to the extent of
2 the value given to MILA.

3 7. Each transfer alleged to be fraudulent (whether under state or federal law)
4 or preferential is not avoidable to the extent that each transferee gave new value to or for the
5 benefit of the debtor after the transfer was made. Each transfer was made in the ordinary course
6 of business and financial affairs of the debtor and the transferee and each transfer was made
7 pursuant to a good faith effort to rehabilitate the debtor and the transfer secured present value
8 given for that purpose as well as antecedent debt.

9 8. Each transfer alleged to be preferential is not avoidable pursuant to
10 section 547 of the Bankruptcy Code because no transfer satisfies all of the prerequisites to
11 avoidance identified in section 547(b) of the Bankruptcy Code. Each transfer is not avoidable to
12 the extent provided under section 547(c)(1), (2), (3), (4), and (5) of the Bankruptcy Code.

13 9. The Trustee has failed to exercise his fiduciary duties as trustee of the
14 estate of MILA, including without limitation his failure to properly supervise counsel and other
15 consultants, resulting in the assertion of claims with no legal or factual basis, all of which has
16 resulted in the defendants incurring unnecessary fees, expenses and other damages.

17 10. In addition, defendants will pursue the following claims at trial:

18 **SAPP COUNTERCLAIMS**

- 19 1. Default on February 2007 Loan
20 2. Default on April 2007 Loan
21 3. Recovery of Amounts Paid to Columbia Bank
22 4. Section 507(b) Claim
23 5. Indemnification
24 6. Relief from Stay and Immediate Payment of Secured Claims
25 7. Intentional Interference with Contractual Relationships
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1 **NEXT COUNTERCLAIMS**

- 2 1. Pre-Petition Breach of Consulting Agreement
3 2. Post-Petition Breach of Consulting Agreement

4 **CRS FINANCIAL COUNTERCLAIMS**

- 5 1. Breach of Lease
6 2. Post-Petition Breach of Lease; failure to pay rent when due
7 3. Intentional Interference with Contractual Relationships

8 **CRS III COUNTERCLAIMS**

- 9 1. Intentional Interference with Contractual Relationships

10 The defendants also seek offset/recoupment as to the amount of any judgment
11 against them in this action.

12 **PLAINTIFF'S AFFIRMATIVE DEFENSES**
13 **TO DEFENDANTS' COUNTERCLAIMS**

14 1. To the extent the counterclaims allege that plaintiff improperly took
15 actions to impose financial hardship on Layne E. Sapp or to try to force him to settle on
16 unfavorable terms (*see* paragraphs 24, 25, and 28 of this defendant's Answer), all of plaintiff's
17 actions were legal, were intended to benefit the estate, and were a reasonable exercise of the
18 Trustee's business judgment.

19 2. Some or all of the counterclaims are barred because Columbia State Bank,
20 not the Trustee, initiated adversary proceedings described in Sapp's Answer.

21 3. Some or all of the counterclaims are barred because the Trustee had
22 probable cause for asserting positions with respect to matters regarding Columbia State Bank and
23 directors and officers liability insurance as described in Sapp's Answer.

24 4. Some or all of the counterclaims are barred because of the privileges
25 afforded to counsel for litigants or because any statements to the media by counsel for the
26 Trustee are true descriptions of the allegations in the pleadings in this case.

1 5. Some or all of the counterclaims are barred by the immunity afforded to
2 the Trustee and his counsel because the Trustee is a quasi judicial officer.

3 6. Some or all of the counterclaims are barred because the Trustee is
4 protected by the business judgment rule.

5 7. Some or all of the counterclaims are barred because the Trustee has not
6 violated any duty imposed by law.

7 8. Some or all of the counterclaims are barred by Federal Rule of
8 Evidence 408.

9 9. Some or all of the counterclaims are barred by the doctrines of waiver,
10 estoppel, unclean hands, laches, *in pari delicto*, issue preclusion, lack of subject matter
11 jurisdiction, or failure to allege facts sufficient to constitute a counterclaim.

12 10. Some or all of the counterclaims are barred because the Trustee has
13 provided adequate protection pursuant to 11 U.S.C. § 507(b).

14 11. Some or all of the counterclaims are barred by 11 U.S.C. § 502(d).

15 12. To the extent any defendant prevails on any counterclaim, plaintiff is
16 entitled to set off and recoup each counterclaim against any claims that plaintiff has against such
17 defendant.

18 13. Mr. Sapp's "Fifth Counterclaim: Indemnification" is barred by one of more
19 of the following:

20 (a) Defendant Layne E. Sapp failed to demand indemnity or
21 advancement of expenses from the Trustee, before asserting that counterclaim,
22 thereby depriving the Trustee and MILA, Inc. of the opportunity to invoke the
23 procedures for responding to such a claim as provided in RCW 23B.08.510. This
24 includes the opportunity to determine if Layne E. Sapp has acted in good faith,
25 whether he reasonably believed that he was acting in the best interests of MILA or
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1 not opposed to the best interests of MILA, and whether Sapp is adjudged liable
2 under the claims in the Second Amended Complaint in this proceeding.

3 (b) Defendant Layne E. Sapp has failed to provide the Trustee
4 with a written affirmation of his good faith that he has met the standard of
5 conduct required by RCW 23B.08.510 entitling him to advancement of expenses
6 and he has failed to provide the Trustee with a written undertaking required by
7 RCW 23B.08.530 that he has an unlimited general obligation to repay any
8 advance if it is ultimately determined that he did not meet the standard of conduct
9 required by RCW 23B.08.510.

10 (c) Defendant Layne E. Sapp admitted that he failed to demand
11 indemnity or advancement of expenses from the Trustee in a motion he filed in
12 the MILA bankruptcy, as explained in a Memorandum Decision filed January 5,
13 2010 in Case No. WW-09-1142 MoPaH by the United States Bankruptcy
14 Appellate Panel of the Ninth Circuit Court of Appeals. As a result, Layne E. Sapp
15 is precluded from asserting any claim for indemnity or advancement of expenses.

16 (d) Defendant Layne E. Sapp's conduct as alleged in the
17 Second Amended Complaint precludes his right to indemnity as to some or all of
18 the claims.

19 14. Without assuming any burden of proof that properly belongs to
20 defendants, the conduct complained of in Mr. Sapp's Eighth Counterclaim for intentional
21 interference with contractual relationships is privileged.

22 15. To the extent any defendant has been damaged, that defendant has failed
23 to mitigate such damage.

24 16. To the extent defendants claim that the Trustee failed to realize value for
25 the estate, defendants' own actions interfered with the Trustee's ability to perform.
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1 9. The initial complaint in this matter was filed on or about August 29, 2008.

2 10. Some of the conduct that is identified in the Second Amended Complaint
3 took place in the Western District of Washington, and venue is proper in this district.

4 11. MILA filed its voluntary chapter 11 petition on July 2, 2007.

5 12. Before filing its voluntary chapter 11 petition, MILA was in the business
6 of making residential mortgage loans and reselling such loans in the secondary mortgage market.
7 Some of the loans that MILA originated were made to borrowers with "subprime" credit scores.

8 13. MILA originated loans to borrowers through a network of independent
9 mortgage brokers, and MILA intended to sell most of the loans that it originated into the
10 secondary mortgage markets.

11 14. MILA borrowed money from so-called "warehouse lenders,"
12 predominantly large national and international financial institutions that provided MILA with
13 lines of credit that were used in connection with the funding of residential mortgage loans.
14 These loans from warehouse lenders were secured by residential mortgage loans made by MILA.

15 15. MILA's transactions with purchasers in the secondary mortgage markets
16 were made pursuant to written contracts between the parties.

17 16. MILA's audited financial statements indicated that in 2004 it had net
18 income of \$17,156,000 after payment of expenses.

19 17. MILA's audited financial statements indicate that it paid \$7,983,000 in
20 cash dividends to its shareholders during 2004.

21 18. MILA's audited financial statements indicated that in 2004 it had net
22 income of \$7,629,000 after payment of expenses.

23 19. MILA's audited financial statements indicate that it paid \$3,248,000 in
24 cash dividends to its shareholders during 2005.

25 20. MILA originated almost \$3 billion of loans in 2004.
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21. MILA retained Deutsche Bank Securities, Inc. ("Deutsche Bank") to attempt to attract investors in MILA in 2005. Deutsche Bank issued a Private Placement Memorandum dated October 2005 and distributed it to potential investors, but failed to receive any offers. Before MILA filed for relief under Chapter 11 of the Bankruptcy Code, it attempted to but failed to sell assets to a third-party purchaser. In particular, despite extensive negotiations with Marathon Asset Management, LP, there was no asset sale with it.

22. MILA entered into several transactions with other companies in which Layne Sapp maintained an interest, including Next Online, CRS I, CRS III, Destiny Leasing, and Lima Sierra.

NEXT ONLINE

23. On about October 4, 2001, Sapp incorporated Next Online.

24. On or about November 11, 2004 MILA entered into a written Software Development and Consulting Services Agreement with Next Online.

25. Beginning in February 2006, MILA entered into a series of agreements related to support to be provided by NextOnline to MILA.

26. At various times, MILA leased aircraft from Lima Sierra.

27. CRS leased office space in the MILA Financial Center to MILA under a lease dated December 18, 2002, which was amended from time to time. MILA occupied all or part of the premises covered by the lease agreement after the commencement of MILA's chapter 11 case.

28. CRS III purchased an unpaved and unimproved parking lot adjacent to the MILA Financial Center.

29. On or about May 16, 2007, MILA and Sapp entered into a written "Consultant Intellectual Property Agreement."

PLAINTIFF'S FACTUAL CONTENTION

1. By no later than December 31, 2004, MILA, Inc. ("MILA") was insolvent.

1 2. In his capacity as director of MILA, Layne E. Sapp ("Sapp") caused
2 MILA to make distributions to shareholders in 2004 and thereafter in violation of
3 RCW 23B.06.400 because MILA would not be able to pay its liabilities as they become due in
4 the usual course of business.

5 3 As a director, controlling shareholder, and officer of MILA, Sapp owed
6 fiduciary duties to MILA, including the duties of loyalty and good faith, obliging him to place
7 the interests of MILA ahead of his personal interests and refrain from engaging in any
8 self-dealing transactions that were not both entirely fair and fully disclosed.

9 4. In self-dealing transactions, Sapp approved excessive compensation for
10 himself to be paid by MILA and Next Online (and Next Online obtained the revenues to pay
11 Sapp's salary from its principal customer, MILA).

12 5. In self-dealing transactions, Sapp caused MILA to enter into unnecessary
13 and detrimental contracts with Next Online, and enabled Next Online to improperly obtain the
14 following:

15 (a) The software owned and developed by MILA related to
16 subprime lending.

17 (b) Excessive revenues from MILA for services provided by
18 Next Online employees that were substantially similar to what MILA had been
19 providing internally, often with the same persons who had performed those
20 functions as MILA employees.

21 6. In a self-dealing transaction, Sapp arranged for Lima Sierra, Inc. to
22 provide MILA with use of a jet, at charges that were excessive and unnecessary for legitimate
23 businesses purposes of MILA.

24 7. In a self-dealing transaction, Sapp arranged for Destiny Leasing to provide
25 MILA with use of a yacht, at charges that were excessive and unnecessary for legitimate
26 businesses purposes of MILA.

1 8. In self-dealing transactions, Sapp arranged for MILA to lease real property
2 from CRS III at an excessive rate; specifically MILA leased property purportedly for parking at a
3 time when MILA did not need the space.

4 9. Defendants have received improper insider transfers avoidable pursuant to
5 11 U.S.C. § 547 that are recoverable under 11 U.S.C. § 550.

6 10. Proofs of claims filed by defendants should be disallowed because
7 pursuant to 11 U.S.C. § 502(d), the court must disallow any claim of any entity from which
8 property is recoverable under 11 U.S.C. §§ 550 or 553 or that is a transferee of a transfer
9 avoidable under 11 U.S.C. §§ 544, 547, or 548, unless such entity or transferee has paid the
10 amount, or turned over any such property, for which such entity or transferee is liable under
11 11 U.S.C. §§ 550 or 553 to the Trustee.

12 11. Because discovery is continuing, the Trustee reserves the right to raise
13 additional factual contentions.

14 **DEFENDANTS' FACTUAL CONTENTIONS**

15 1. According to its independent auditors, creditors, outside professionals and
16 audited financial statements, MILA was and remained solvent during all relevant time periods
17 and Mr. Sapp reasonably relied on these assessments.

18 2. Mr. Sapp did not directly or indirectly misappropriate business
19 opportunities available to MILA.

20 3. All transactions between MILA, Mr. Sapp, and related entities were fair to
21 MILA.

22 4. MILA's transactions with Mr. Sapp and related parties were consistent
23 with Ms. Sapp's duties of loyalty and good faith.

24 All transactions between MILA, Mr. Sapp and related parties about which the
25 Trustee has complained were disclosed to key creditors of MILA.

1 5. Neither Mr. Sapp nor Next Online Mortgage Technologies claims
2 ownership of AccessPoint; Mr. Sapp delivered source code for AccessPoint to the Trustee
3 through MILA's counsel in July 2007.

4 6. The software program developed by Next Online Mortgage Technologies
5 known as Credex is not AccessPoint.

6 7. The Trustee hired his own law firm to pursue this action, has failed to
7 exercise independent judgment and control over the litigation, and as a result has incurred
8 expenses not reasonably likely to benefit MILA's estate.

9 8. The Trustee has instituted proceedings and asserted claims that he knew or
10 should have known were defective or lacked merit.

11 9. MILA is in default on a \$1 million promissory note dated February 20,
12 2007 and a \$250,000 promissory note dated April 16, 2007, both of which are secured by
13 substantially all of the remaining assets of the MILA bankruptcy estate.

14 10. Mr. Sapp as guarantor, paid interest and other fees and expenses to
15 Columbia Bank on MILA's behalf after MILA breached its obligations under loan documents,
16 dated November 10, 2006.

17 11. Substantially all of the cash in MILA's estate constitutes defendants' cash
18 collateral.

19 12. Mr. Sapp is entitled to indemnification from MILA under the terms of its
20 articles of incorporation and bylaws for claims asserted against him in his capacity as an officer
21 or director of MILA.

22 13. The Trustee has tortiously interfered with the defendants' contractual
23 relationships with Columbia Bank.

24 14. MILA has breached the February 1, 2006 Consulting Services Agreement.
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15. MILA has breached the Lease Agreement, as amended, dated December 18, 2002; in addition, the Trustee has failed rent due on the space occupied by him post-petition.

16. Any transfers otherwise avoidable under Section 547 of the Bankruptcy Code are not recoverable by the Trustee.

17. Because discovery is continuing, the Defendants reserve the right to raise additional factual contentions.

ISSUES OF LAW

The following are the issues of law identified by the plaintiff to be determined by the court:

1. Should the court exclude evidence of how any recoveries by the Trustee will be used?

2. May Sapp rely on exculpatory provisions in MILA's articles of incorporation as a defense to the breach of fiduciary duty claims?

3. Are the Trustee's actions with respect to Columbia State Bank and its relationship with Sapp admissible? If so, is the Trustee protected by quasi-judicial immunity, the business judgment rule, or because he had probable cause to take the actions?

4. Are the Trustee's actions with respect to directors and officers liability insurance admissible? If so, is the Trustee protected by quasi-judicial immunity, the business judgment rule, or because he had probable cause to take the actions?

5. What are the procedural and substantive prerequisites that a corporate officer or director must fulfill to be entitled to indemnity from the Trustee?

6. To what extent, if any, may Sapp offer evidence that he relied on legal advice in any related party transaction, if the related parties were both represented by the same law firm?

7. May Sapp offer evidence in his defense that many persons did not anticipate the "subprime meltdown" that has led to failure of many subprime lenders?

8. What foundation must Sapp lay before presenting testimony that various financial institutions (e.g., Credit Suisse, Deutsche Bank, GMAC-Residential Funding) continued to do business with MILA during the time periods when the Trustee claims that MILA was insolvent?

9. What foundation must Sapp lay before presenting testimony from McGladrey & Pullen, LLP (MILA's outside auditors) that MILA was a going concern and a solvent business?

The following are the issues of law identified by the defendants to be determined by the court:

1. Which, if any, claims by the Trustee are eligible for trial by jury?

2. To what extent are the Trustee's claims barred by the statute of limitations?

3. Do any of the Trustee's expert witnesses qualify as experts under the Federal Rules of Evidence?

4. Because discovery is continuing, the Defendants reserve the right to raise additional legal issues.

EXPERT WITNESSES

(a) Each party shall be limited to eight expert witnesses.

(b) Based on the discovery and pleadings so far, which discovery is not yet complete, Plaintiff's expert witnesses, and the subjects on which they will testify are as follows:

1. Daniel Scouler
1800 Century Park East, Ste. 600
Los Angeles, CA 90067

The issue upon which he will testify is when MILA became insolvent and why.

(Will testify)

1 2. David Scouler
2 445 Park Avenue, 10th Floor
3 New York, NY 10022

4 The issue upon which he will testify is on Next Online related party transactions
5 and software issues, and appropriate compensation for Next Online employees. (Will testify)

6 3. Professor Douglas Branson
7 University of Pittsburgh
8 3900 Forbes Avenue
9 Pittsburgh, Pennsylvania 15260

10 The issue upon which Professor Branson will testify is on corporate governance
11 issues including breaches of fiduciary duties. (Will testify)

12 4. Larry Portal
13 FTI Consulting
14 101 Eisenhower Parkway
15 Roseland, NJ 07068

16 The issue upon which he will testify is on appropriate compensation for Sapp as
17 the Chief Executive Officer of MILA. (Will testify)

18 5. Maris Kurens
19 1312 243rd Avenue NE
20 Sammamish, WA 98074

21 The issue upon which he will testify is on software issues. (Will testify)

22 6. Real Estate Professional (TBD)

23 This expert will testify as to the market rates and expected usage of parking
24 spaces for MILA.

(c) Defendants' expert witnesses, and the subjects on which they will testify are as follows:

1. Layne Sapp
c/o Davis Wright Tremaine LLP
1201 Third Ave, Suite 2200
Seattle, WA 98101

Defendants' counterclaim damages (will testify)

2. Luke Adamson
c/o Davis Wright Tremaine LLP
1201 Third Ave, Suite 2200
Seattle, WA 98101

Software issues and Next consulting services (may testify)

3. Ubermind, Inc.
2400 NW 80th St.
Seattle, WA 98117
06.633.1167

Software issues and consulting services (may testify)

4. Christie J. Bakker
McGladrey & Pullen
1145 Broadway Plaza, Suite 900
Tacoma, WA 98402
253.572.7111

MILA financial condition (may testify)

OTHER WITNESSES

(a) Based on the discovery so far (which is not complete), Plaintiff expects to call the following non-expert witnesses to testify about the following subjects:

	NAME	ISSUE
1.	Geoffrey Groshong Miller Nash LLP 4400 Two Union Square 601 Union Street Seattle, WA 98101 (Will testify)	Financial condition of MILA, Inc. since filing of bankruptcy petition; claims asserted by warehouse lenders, bulk loan purchasers, and other creditors; custody of MILA, Inc. records; general nature of MILA business.

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2 2. Layne Sapp
3 4242 Hunts Point Road
4 Hunts Point, WA 98004
5 (Will testify)
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MILA's financial condition, lack of shareholder meetings, executive compensation, dividends, related party transactions described in complaint, Sapp's actions as sole director of MILA, transfer of MILA staff to Next Online, accounting for repurchased loans, lending practices and standards, ownership of software; dealings with outside auditors, deletion of electronic evidence.

7 3. Aaron Morse
8 6320 E. 35th Avenue
9 Anchorage, AK 99504
10 (possible witness only)

Creation by MILA of "Next," Jasper, AccessPoint, Decision Point, Credex software; use of MILA employees to staff Next Online, absence of shareholder meetings of Next Online; availability of similar "off the shelf software."

11 4. Douglas Prince
12 Foster Pepper PLLC
13 1111 Third Avenue
14 Suite 3400
15 Seattle, WA 98101
16 (Will testify)

Multiple legal representation of MILA, Sapp, Next Online, and related entities; absence of valid waiver of conflict of interest; legal services to MILA; attempted transfer of software ownership from MILA to Next Online, communications with Sapp.

17 5. Douglas Schwed
18 12722 N.E. 28th Street
19 Bellevue, WA 98005
20 (Will testify)

Preparation of MILA director minutes and resolutions, absence of MILA shareholder meetings, related party transactions described in complaint, communications with Sapp, deletion of electronic evidence.

21 7. Jaennae Dinius
22 6409 158th Street S.E.
23 Snohomish, WA 98296
24 (Possible witness only)

Compensation practices; relationship with Sapp.

25 9. Barney Guy
26 10705 226th Street, S.W.
Edmonds, WA 98020
(Possible witness only)

Extent of disclosures to warehouse lenders and bulk loan purchasers, treatment of repurchase obligations, financial status of MILA, lending practices of MILA; dealings with auditors; efforts to find investors/capital; secondary markets.

10. Tina Gonsalves
2048 13th Avenue West #6
Seattle, WA 98119
(Director of Marketing)
(Possible witness only)

MILA software ownership; MILA marketing efforts; treatment of repurchase obligations.

- 1 11. Vicki Littell Relationship between MILA and Next Online, Inc.,
2 6 Harbor Boulevard instructions from Sapp on related party
3 Burbank, WA 99323 transactions, admissions by Sapp on financial
(Possible witness only) status of MILA.
- 4 12. Mark Hikel MILA's financial condition, lack of shareholder
5 1000 First Avenue, #2202 meetings, executive compensation, dividends,
6 Seattle, WA 98104 related party transactions described in complaint,
(Possible witness only) Sapp's actions as sole director of MILA,
7 accounting for repurchased loans, lending practices
and standards, ownership of software; dealing with
outside auditors.
- 8 13. Sarah Hikel MILA's financial condition, lack of shareholder
9 1000 First Avenue, #2202 meetings, executive compensation, dividends,
10 Seattle, WA 98104 related party transactions described in complaint,
(Possible witness only) Sapp's actions as sole director of MILA,
11 accounting for repurchased loans, lending practices
and standards, ownership of software; dealing with
outside auditors.
- 12 15. Luke Adamson Charges by Next Online to MILA; facts to support
13 Address is believed to be: or oppose statements he has presented to the court,
14 2643 38th Avenue dividends and salary payments to Sapp, accounting
15 Seattle, WA 98199 practices at MILA.
(Possible witness only)
- 16 16. Sandy Kottke, MILA recordkeeping and filing; occupancy of
17 fka Sandy Murray MILA headquarters building by MILA and other
18 31122 State Route 9 N.E. companies, size of workforce at MILA and Next
Arlington, WA 98223 Online.
(Possible witness only)
- 19 17. William Dougherty Financial status of MILA; negotiations with
20 15203 102nd Avenue N.E. auditors; financial treatment of repurchase
21 Bothell, WA 98011 obligations; ownership of MILA software; fees
(Possible witness only) paid in related party transactions; salary and
dividend payments to Sapp.
- 22 18. Greg Heitlauf Ownership and possession of software source
23 10419 134th Avenue N.E. codes.
24 Kirkland, WA 98003
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- 1 19. Marathon Private Equity Financial status of MILA; ownership of MILA
2 Fund I, LLC software; valuation of MILA; potential purchase of
3 c/o Heather Bishop MILA, Inc. or its software.
4 Lowenstein Sandler PC
5 65 Livingston Avenue
6 Roseland, NJ 07068
7 (Possible witness; testimony
8 would be by deposition)
- 6 20. McGladrey & Pullen Going concern status of MILA; MILA financial
7 1145 Broadway Plaza, Suite statements; treatment of repurchase obligations;
8 900 reports by McGladrey and Pullen to MILA
9 Tacoma, WA 98402 management; status of financial controls at MILA;
10 Christie J. Bakker (lead audit related party transactions; ownership of software;
11 partner) extent of disclosures received from MILA.
12 (Possible witness only)
- 10 21. Deutsche Bank Securities Unsuccessful efforts to raise capital for MILA;
11 Andrew Kass status of information it analyzed regarding MILA's
12 John Winkler repurchase obligations.
13 c/o Caroline Whittemore,
14 Deutsche Bank Legal
15 Department
16 60 Wall Street, 36th Floor
17 New York, NY 10005
18 (Possible witness; testimony
19 would be by deposition)
- 17 22. Trent Gillespie Development of MILA and Next Software, need
18 5730 N.E. 56th Street for outside consultants.
19 Seattle, WA 98105
20 (Director of Information
21 Technology at MILA)
22 (Possible witness only)
- 21 24. Carla Rei Ownership of MILA software; transfer of MILA
22 11744 N.E. 148th Place staff to Next Online.
23 Kirkland, WA 98034
24 (former MILA and Next Online
25 IT employee)
26 (Possible witness; testimony
only)

- 1 25. Cristina Ruiz MILA handling of repurchase obligations.
2 117 Bristlecone Circle
3 Bailey, CO 80421
4 (Possible witness; testimony
5 would be by deposition)
- 6 26. Jameson Park MILA dividend payments, MILA financial status;
7 600 Seventh Avenue, #402 MILA accounting.
8 Seattle, WA 98104
9 (MILA controller)
10 (Possible witness only)
- 11 27. Shayir Khan Development of software for MILA.
12 146 N. Canal St., #300
13 Seattle, WA 98103
- 14 28. Miles Stover Nature of MILA business leading to claims against
15 Turnaround Inc. it; status of claims against MILA bankruptcy
16 3415 A Street N.W. estate; status of MILA's records.
17 Gig Harbor, WA 98335
- 18 29. Skycorp Executive Charters Flight logs to show use of corporate jet.
19 9724 32nd Drive
20 Everett, WA 98204
21 (Possible witness only)
- 22 30. Credit Suisse First Boston Extent of Credit Suisse due diligence to understand
23 Mortgage Capital, LLC MILA's financial condition, including the analysis,
24 Tim Gilbert if any, of how MILA accounted for repurchase
25 11 Madison Avenue obligations.
26 New York, NY
(Possible witness; testimony
would be by deposition)

(b) Defendants expect to call the following non-expert witnesses to testify
about the following subjects:

Luke Adamson
c/o Davis Wright Tremaine LLP
1201 Third Ave, Suite 2200
Seattle, WA 98101

1 Mr. Adamson was the Chief Technology Officer at Next Online Mortgage Technologies, Inc.
2 He will testify regarding the technology issues in this action, including AccessPoint and Credex,
3 and the technology services provided by Next Online to MILA.

4 **Christie J. Bakker**
5 McGladrey & Pullen
6 1145 Broadway Plaza, Suite 900
Tacoma, WA 98402
253.572.7111

7 Ms. Bakker was the person responsible at MILA's independent auditors, McGladrey & Pullen,
8 for the preparation of MILA's audited financial statements. Ms. Bakker will testify regarding the
9 preparation of MILA's audited financial statements in conformance with Generally Accepted
Accounting Principles, including its cash flow statements, ALLL and provision and its opinion
that MILA was a going concern and solvent business.

10 **Rob Beuerk**
11 Rob Beuerk Consulting
12 Current Address Unknown

13 Mr. Beuerk was an independent consultant retained by Credit Suisse to conduct annual due
14 diligence reviews of MILA. Mr. Beuerk may testify regarding his reviews, including his
analysis of loan repurchases and recommendations for renewal of Credit Suisse's correspondent
lending relationship with Credit Suisse.

15 **Aaron Brooks**
16 Ubermind, Inc.
17 2400 NW 80th St.
18 Seattle, WA 98117
206.633.1167

19 Mr. Brooks is the Software Architect Vice President / CFO of Ubermind. Mr. may testify
20 regarding the technology issues in this action, including AccessPoint and Credex.

21 **Ric Brandt**
22 10885 NE 4th Street, Suite 500
23 Bellevue, WA 98004
425.455.8500

24 Mr. Brandt is a First Vice President at CB Richard Ellis in Bellevue, Washington. Mr. Brandt
may testify regarding the defendants' commercial real estate.

25 **Rod Callanta**
26 Credit Analyst
GMAC-Residential Funding

1 1646 No. California Blvd., Suite 400
2 Walnut Creek, CA 94596
3 925.935.0614

4 Mr. Callanta is a Credit Analyst at GMAC-RFC. Mr. Callanta may testify regarding GMAC-
5 RFC's lending relationship with MILA and its financial monitoring and due diligence of MILA.

6 **Brian Carl**
7 20700 44th Avenue West
8 Lynnwood, WA 98036-7742
9 (425) 921-6398

10 Mr. Carl was a SVP at MILA and a MILA shareholder. Mr. Carl may testify regarding the
11 issues in this action.

12 **Paul Coudrier**
13 Credit Suisse Credit Risk Management

14 Mr. Coudrier worked in the Credit Risk Management group at Credit Suisse. Mr. Coudrier may
15 testify regarding Credit Suisse's lending relationship with MILA and its financial monitoring and
16 due diligence of MILA.

17 **Bill Dougherty**
18 20700 44th Avenue West
19 Lynnwood, WA 98036-7742
20 (425) 921-6398

21 Mr. Dougherty was the CFO at MILA. Mr. Dougherty has information will testify regarding the
22 financial issues in this action.

23 **Mark J. Frost**
24 20700 44th Avenue West
25 Lynnwood, WA 98036-7742
26 (425) 921-6398

Mr. Frost was the Corporate Treasurer at MILA. Mr. Frost may testify regarding the financial
issues in this action.

Tim Gilbert
VP Credit Suisse Mortgage Finance
302 Carnegie Center, Suite 200
Princeton, NJ 08540
609.627.5067

1 Mr. Gilbert was a Vice President in the Mortgage Finance Group at Credit Suisse. Mr. Gilbert
2 may testify regarding Credit Suisse's lending relationship with MILA and its financial
3 monitoring and due diligence of MILA.

4 **Doug Graham**

Credit Suisse

5 Doug Graham is an Analyst at Credit Suisse. Mr. Graham may testify regarding Credit Suisse's
6 financial monitoring and due diligence of MILA.

7 **Geoffrey Groshong**

Miller Nash LLP

4400 Two Union Square

601 Union Street

Seattle, WA 98101

10 Geoffrey Groshong is the Trustee. Mr. Groshong will testify regarding the matters addressed in
11 defendants' counterclaims.

12 **Bernard Guy**

20700 44th Avenue West

Lynnwood, WA 98036-7742

(425) 921-6398

15 Mr. Guy was the VP Capital Markets, MILA and a MILA shareholder. Mr. Guy will testify
16 regarding all issues in this action.

17 **Mark Hikel**

20700 44th Avenue West

Lynnwood, WA 98036-7742

(425) 921-6398

19 Mr. Hikel was the President of MILA and a MILA shareholder. Mr. Hikel will testify as to all
20 issues in this action.

21 **Sarah Hikel**

20700 44th Avenue West

Lynnwood, WA 98036-7742

(425) 921-6398

24 Ms. Hikel was the Chief Operations Officer at MILA. Ms. Hikel will testify regarding as to all
25 issues in this action.

1 **David R. Johnson**

2 Loan Officer
3 GMAC-RFC
4 626.533.4414

5 Mr. Johnson is a Loan Officer at GMAC-RFC. Mr. Johnson may testify regarding GMAC-
6 RFC's lending relationship with MILA and its financial monitoring and due diligence of MILA.

7 **Jameson Park**

8 20700 44th Avenue West
9 Lynnwood, WA 98036-7742
10 (425) 921-6398

11 Mr. Park was the Controller at MILA. Mr. Park may testify regarding the financial issues in this
12 action.

13 **Shehryar Khan**

14 Ubermind, Inc.
15 2400 NW 80th St.
16 Seattle, WA 98117
17 206.633.1167

18 Mr. Khan is the Chief Executive Officer of Ubermind. Mr. Khan may testify regarding the
19 technology issues in this action, including AccessPoint and Credex.

20 **Richard Liljedahl**

21 20700 44th Avenue West
22 Lynnwood, WA 98036-7742
23 (425) 921-6398

24 Mr. Liljedahl was an administrative assistant. Mr. Liljedahl may testify regarding the documents
25 and issues in this action.

26 **William Moffatt**

 Orange County, California
 949.973.4458

 Mr. Moffatt previously worked at GMAC. Mr. Moffatt may testify regarding GMAC-RFC's
 lending relationship with MILA and its financial monitoring and due diligence of MILA.

1 **Peter Phelps**

2 20700 44th Avenue West
3 Lynnwood, WA 98036-7742
4 (425) 921-6398

5 Mr. Phelps was the Chief Financial Officer at Next Online Mortgage Technologies, Inc. Mr.
6 Phelps may testify regarding to the financial issues in this action.

7 **Layne Sapp**

8 c/o Davis Wright Tremaine LLP
9 1201 Third Ave, Suite 2200
10 Seattle, WA 98101

11 Mr. Sapp is a named defendant and the Chief Executive Officer of the corporate defendants. Mr.
12 Sapp will testify regarding all issues in this action.

13 **Wendy N. Stein**

14 CPA PS Wendy N. Stein
15 Snohomish, WA 98290
16 (360) 668-8601

17 Ms. Stein is a certified public accountant who provided professional services to the defendants.
18 Ms. Stein may testify regarding financial issues in this action.

19 **Gary Timmerman**

20 Formerly, Credit Suisse First Boston Mortgage Capital LLC
21 302 Carnegie Center, 2d floor
22 Princeton, NJ 08540
23 609.915.8092

24 Mr. Timmerman is a former Managing Director at Credit Suisse First Boston Mortgage Capital.
25 Mr. Timmerman may testify regarding Credit Suisse's lending relationship with MILA and its
26 financial monitoring and due diligence of MILA.

27 **John Winkler**

28 Director
29 Deutsche Bank Securities Inc.
30 60 Wall St
31 New York, NY 10005-2858
32 212.250.5314

33 Ms. Winkler is a Director as Deutsche Bank. Mr. Winkler may testify regarding MILA's Private
34 Placement Memorandum.

1 **EXHIBITS**

2 Because discovery is not complete, the parties cannot yet specify each exhibit that
3 will be offered and which exhibits will be stipulated to as admissible or not challenged as to
4 authenticity. The parties will provide such information by the December 17, 2009 deadline set
5 by the Court's scheduling order [Docket No. 115], or such other date as the Court may order.

6 **ACTIONS BY THE COURT**

- 7 (a) This case is scheduled for trial on _____, 20____, at _____.
8 (b) Trial briefs shall be submitted to the court on or before _____.
9 (c) If the trial will be conducted with a jury, jury instructions requested by
10 either party shall be submitted to the court on or before _____. Suggested questions
11 of either party to be asked of the jury by the court on voir dire shall be submitted to the court on
12 or before _____.

- 13 (d) (Insert any other ruling made by the court at or before pretrial conference.)
14 This order has been approved by the parties as evidenced by the signatures of
15 their counsel. This order shall control the subsequent course of the action unless modified by a
16 subsequent order. This order shall not be amended except by order of the court pursuant to
17 agreement of the parties or to prevent manifest injustice.

18 DATED this ____ day of _____, 2010.

19
20 _____
United States Bankruptcy Judge

1 **FORM APPROVED:**

2 MILLER NASH LLP

3
4 By: s/Brian W. Esler

2/26/10

Date

5 Brian W. Esler, WSBA No. 22168
6 E-mail: brian.esler@millernash.com
7 Bruce A. Rubin, WSBA No. 37384
8 E-mail: bruce.rubin@millernash.com
601 Union Street, Suite 4400
Seattle, Washington 98101
Telephone: (206) 622-8484
Fax: (206) 622-7485

9 *Attorneys for Plaintiff*

10 DAVIS WRIGHT TREMAINE LLP

11
12 By: s/Steven P. Caplow

2/26/10

Date

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19 *Attorneys for Defendants*